

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

INDIGENOUS ENVIRONMENTAL
NETWORK and NORTH COAST RIVERS
ALLIANCE,

4:19-cv-00028-BMM

ORDER

vs.

PRESIDENT JOSEPH R. BIDEN,¹ et al.,

Defendants,
and

TRANSCANADA KEYSTONE
PIPELINE, LP, a Delaware limited
partnership, and TC ENERGY
CORPORATION, a Canadian Public
Company,

Defendant-Intervenors.

¹ President Joseph R. Biden is substituted for his predecessor pursuant to Federal Rule of Civil Procedure 25(d).

Indigenous Environmental Network (“IEN”) and North Coast Rivers Alliance (“NCRA”) (collectively, “Plaintiffs”) brought this action against President Donald J. Trump and various government agencies and agents in their official capacities (“Federal Defendants”). Plaintiffs allege that President Trump violated the Property Clause of the U.S. Constitution, the Commerce Clause of the U.S. Constitution, and Executive Order 13,337 when he issued a Presidential Permit in 2019 (“2019 Permit”) to Defendant-Intervenors TransCanada Keystone Pipeline, LP and TC Energy Corporation (collectively, “TC Energy”) to construct a cross-border segment of the Keystone XL oil pipeline (“Keystone”).

President Joseph R. Biden signed an Executive Order on January 20, 2021 to revoke the 2019 Permit. *See* Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis, Exec. Order 13,990, 86 Fed. Reg. 7,037, 7,041 (Jan. 25, 2021). President Biden’s revocation noted that the 2019 Permit included an express condition that the President could revoke that permit at “the President’s sole discretion.” *Id.* The Court requested a status report from each party in light of President Biden’s Executive Order. (Doc. 154).

Federal Defendants request that the Court stay the district court proceedings as it did in the related *Rosebud Sioux Tribe* case. (Doc. 157 (citing *Rosebud Sioux Tribe v. Biden*, No. 4:18-cv-118-BMM)). Federal Defendants further assert

“[b]ecause the only action challenged by Plaintiffs has been revoked, the case is now moot.” (Doc. 157 at 2).

TC Energy similarly requests that the Court stay the district court proceedings to match the related *Rosebud Sioux Tribe* case. (Doc. 155 (citing *Rosebud Sioux Tribe*, No. 4:18-cv-118-BMM)). TC Energy further asserts that the issue of mootness should be subject to briefing. (Doc. 157 at 2–3).

Plaintiffs do not argue for a stay, but instead assert that no part of President Biden’s order “prevents President Biden from exercising the identical ‘sole discretion’ in that order to unilaterally reissue” the permit for Keystone. (Doc. 156 at 3). Plaintiffs further assert that President Biden’s order “does not concede that the Permit was issued unlawfully, let alone unconstitutionally.” (Doc. 156 at 2). Plaintiffs’ arguments indicate a potential conflict regarding mootness in this case.

Having considered the status reports from each party and finding that good cause exists to grant the relief requested, the case is hereby **STAYED until April 5, 2021** to match the stay in the *Rosebud Sioux* case. Before that date, the parties shall each submit a status report advising the Court whether a continued stay is warranted or if the Court should set deadlines for mootness briefing.

TC Energy shall notify the Court sixty days in advance of any construction of the main pipeline or new pump stations.

Federal Defendants shall notify the Court if TC Energy requests a notice to proceed from the U.S. Bureau of Land Management (“BLM”) or schedules a preconstruction conference with BLM.

DATED this 17th day of February, 2021



Brian Morris, Chief District Judge
United States District Court